

No. 14/13/87-6 Lab/168.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s T. C. Haryana Chandigarh *versus* Sh. Dalip Singh.

IN THE COURT OF SH. U. B. KHANDUJA PRESIDING OFFICER LABOUR COURT-II,
FARIDABAD

Reference No. 395/92

between

1. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH

2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDA BAD .. Management

versus

SHRI DALIP SINGH S/O SH. BAYASU RAM VILLAGE & POST OFFICE, BUTANA
DISTRICT SONEPAT .. Workman.

Present :

Shri B. S. Yadav, for the workman.

Shri Jagbir Singh for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') the Governor of Haryana referred the following dispute between parties mentioned above, to this court for adjudication,—vide Haryana Government endorsement No. 37503—509 dated 5th August, 1992.

Whether the termination of services of Sh. Dalip Singh is legal and justified? If not, to what relief, he is entitled to?

2. The workman rendered satisfactory services as driver for five years. On 31st January, 1990 he was charge-sheeted on the allegation that he had been absent from duty with effect from 15th June, 1990 to 2nd July, 1990. He replied that he was prevented by illness to attend to duty. The respondent No. 2 however, ordered enquiry. The Enquiry Officer conducted the enquiry in violation of the principles of natural justice and made report by twisting the facts. The respondent No. 2 then issued show cause notice without sending him copy of the enquiry report. He was not given an opportunity of personal hearing and was dismissed from service illegally. He is thus, entitled to be reinstated into service with full back wages and continuity in service.

3. The respondent No. 2, stated in his written statement dated 10th March, 1993 that the workman was issued charge-sheet as he had been absent from duty with effect from 15th June, 1990 to 2nd July, 1990 without any intimation. His reply was not found satisfactory and so the domestic enquiry was ordered. He was found guilty of the charge and his services were terminated.

4. The workman re-asserted his position in the rejoinder dated 8th October, 1993.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the enquiry got conducted by the management was fair and proper?

(2) Whether the termination of services of Sh. Dalip Singh is legal and justified? If not, to what relief, is he entitled to? (As per reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under:—

Issue No. 1 :

8. It has been pleaded on behalf of the workman that it is clear from the perusal of the enquiry proceedings Ex. M-10 that the workman was not granted any opportunity to cross-examine the sole witness Yaddir Singh examined by the respondent. Thus, it can not be taken that the enquiry conducted by the respondent was fair and proper. In reply, it has been contended that the requisite opportunity was provided as stated

by the Enquiry Officer in the court but the workman had not availed of the same. This position taken by the respondents appears to be correct because the workman admitted in the court that the witness was examined in his presence and his signatures also appear at the end of the statement of the witness. Besides, the workman did not raise this objection either in his statement made before the Enquiry Officer or in his reply to the show cause notice dated 8th April, 1991 Ex. M-7. This objection was taken for the first time in the demand notice and it appears to be an after thought.

In the result, it is held that the enquiry got conducted by the respondent was fair and proper. Issue No. 1, is thus decided in favour of the respondent and against the workman.

Issue No. 2 :

9. It has been submitted on behalf of the respondents that it stands proved from the statement of MW-1 Mahinder Singh coupled with documents Ex. M-1 to Ex. M-19 that the services of the workman were terminated on finding him guilty of serious charges of absent from duty with effect from 15th June, 1990 to 2nd July, 1990 without any intimation. It was also found in the domestic enquiry that he had not taken a consistent plea about the disease from which he had been allegedly suffering during this period. He himself had not availed of opportunity of personal hearing despite the fact that he was issued several letters for the purpose. The impugned action taken by the management is thus, legal and justified.

10. In reply, it has been submitted on behalf of the workman that he had delivered an application for the grant of leave personally to the duty inspector during the period of his leave but that was not produced deliberately by the respondents. He submitted medical certificates in support of his illness but the same were not taken into consideration. It is thus, clear that he had not attended duty during the period from 15th June, 1990 to 2nd July, 1990 due to sickness. Apart from this, he had rendered meritorious service for a long period of 11 years. He was also issued commendation certificate by the Rotary Club for performance of his duty. The penalty of termination of services is quite disproportionate to the charge and as such the same is not at all justified. Consequently, he is entitled to be reinstated into service with full back wages and continuity in service.

11. The workman had not produced a copy of the application for the grant of leave allegedly given by him to the duty inspector. In this regard, he stated in his cross examination that he was unable to indicate the date on which he had given the application. Beside this, on one hand, the case of the workman is that he had been seriously ill at Butana (Rohtak) during the period from 15th June, 1990 to 2nd July, 1990. On the other hand, his version is that he had delivered his application for the grant of leave personally at Faridabad. In this situation no reliance can be placed on the self serving statement of the workman that he had submitted an application for the grant of leave. It is thus, held that he had not sent any intimation to the respondent about his alleged illness during the period from 15th June, 1990 to 2nd July, 1990.

12. The Enquiry Officer based his findings on the fact that the workman had stated before him he could not attend to his duty on 15th June, 1990 due to sudden pain in his chest but he had stated in his reply to the charge-sheet that he had been suffering from diarrhoea and boil on his foot. In this situation no adverse inference can be drawn against the respondent on the ground that the medical certificates produced by the workman were not properly considered. The plea taken by the workman is thus, found to be untenable.

13. There is however, merit in the submission made on behalf of the workman that the penalty of termination of his services of the workman even on the basis of proved charge of wilful absence from duty for a period of 15 days is excessive keeping in view the fact that he had rendered service for a period of about 11 years. It is thus, held that the penalty of termination of services of the workman is not justified. Consequently it is held that the workman is entitled to be reinstated into service without back wages. The workman is not entitled to back wages as the impugned order has been found to be legal. The period from the date of passing of the impugned order till he resume duty may be treated as leave without pay for all purposes. The award is passed accordingly.

The 4th January, 1995

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II Faridabad.

Endorsement No. 113, dated the 17th January, 1995.

A copy with three spare copies forwarded to the Financial Commissioner & Secretary to the Government Haryana Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad